

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Odino Joseph
c/o Noah's Ark Baptist Church
576 11th Street North
Naples, Florida 34102

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File Number EB-02-TP-300
NAL/Acct.No. 200232700020
FRN No.0007-3087-3

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 5, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Odino Joseph apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended ("Act").¹ Specifically, we find Odino Joseph apparently liable for operating a radio station without Commission authorization.

II. BACKGROUND

2. On April 22, 2002, the FCC's Tampa Field Office ("Tampa Office") received a complaint from a Naples, Florida broadcaster regarding an unlicensed FM radio station operating on the frequency 104.3 MHz in the Naples area.

3. On May 14, 2002, two agents from the Tampa Office drove to the Naples, Florida area to investigate the complaint of unlicensed operation on 104.3 MHz. As the agents approached the Naples area they detected an FM radio station operating on 104.3 MHz. Using electronic direction finding techniques, the agents positively identified the source of the transmissions to be an antenna mounted on a tower attached to the back of Suite # 530 in a strip mall located at 11th Street North, Naples, Florida. The agents determined that the station exceeded the permissible level for a non-licensed low-power radio transmitter by 31,953 times. Accordingly, a license was required for operation of this station. FCC records show no license has been issued for the operation of an FM broadcast station at this location. Thus the station operated in violation of 47 U.S.C. § 301. The agents approached Suite # 530 and interviewed a man near the suite. This man stated that he subleased Suite # 530 along with a "Pastor Odino" but that it was "Pastor Odino" who operated the radio station. This man identified to the agents the location of the radio station behind locked doors inside Suite # 530. Inside Suite # 530, the agents found a handwritten note with the words "Pasteur Odino" and a telephone number. The agents observed a van parked in front of the strip mall. On the van were signs with the words "Noah's Ark Baptist Church" along with an address that identified the location of the church as another suite in the same strip

¹ 47 U.S.C. § 301.

mall. The signs also listed a telephone number and the name “Pastor Odino Joseph” as the church’s pastor. The agents contacted Pastor Odino Joseph at the phone number found during the investigation. During this call, Mr. Joseph admitted to the operation of the unlicensed radio station on 104.3 MHz and promised to cease operation until a license could be obtained.

III. DISCUSSION

4. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On May 14, 2002, Odino Joseph operated a radio station on the frequency 104.3 MHz from 530 11th Street North, Naples, Florida, without benefit of the required Commission authorization.

5. Based on the evidence before us, we find Odino Joseph willfully² violated Section 301 of the Act by operating radio transmission apparatus without a license.

6. Pursuant to Section 1.80(b)(4) of the Commission’s Rules, the base forfeiture amount for operating radio transmission apparatus without a license is \$10,000.³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁴ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Odino Joseph is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended, for operating radio transmitting apparatus without a license.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Odino Joseph SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503 (b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. and FRN referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Odino Joseph at 576 11th Street North, Naples, Florida 34102.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office
Enforcement Bureau

⁷ See 47 C.F.R. § 1.1914.